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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

760-49 RCE

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on September 28, 2005

Signature

Typed or printed name

Application Number

09/974,653

Filed

October 10, 2005

First Named Inventor

Andrew D. Bicek

Art Unit

3731

Examiner

Nguyen, Vi X

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

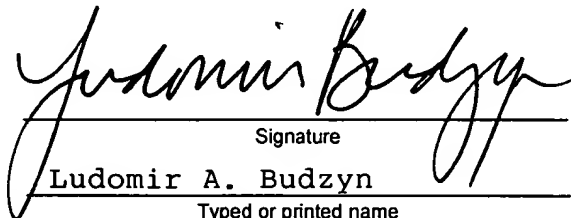
☒

attorney or agent of record.

Registration number 40,540☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____


Signature
Ludomir A. Budzyn
Typed or printed name

(973) 331-1700

Telephone number

September 28, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) Bicek et al. Examiner: Nguyen, V.X.
Serial No.: 09/974,653 Group Art Unit: 3731
Confirmation No.: 9912 Docket: 760-49 RCE
Filed: October 10, 2001 Dated: September 28, 2005
For: STENT DESIGN WITH
SHEATH ATTACHMENT
MEMBERS

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Signed: *[Signature]*

STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In support of the concurrently-filed Notice of Appeal and Pre-Appeal Brief Request for Review, please consider the patentability of the claims of the above-identified application in view of the following Remarks.

Remarks begin on page 2 of this paper.

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REMARKS

Reconsideration of the application is respectfully requested.

Claims 17-24 and 39 are in the application and have been finally rejected. Claims 1-16 and 25-28 have been withdrawn in view of a previous election.

Claims 17-24 and 39 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Buirge et al. (U.S. Patent No. 5,693,085). In response to Applicants' previous arguments, the Examiner stated in the Final Office Action of June 28, 2005,

Applicant's arguments filed 4/12/2005 have been fully considered but they are not persuasive. the [sic] applicant argues that Buirge reference fails to show certain feature of applicant's invention, it is noted that the feature upon which applicant relies (i.e., the outer sleeve 12, or the inner sleeve 13 be located inside of the assembled stent/sleeve 15) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See in re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In fact, Buirge et al disclose in fig 7, a main stent (10) has a radially-expandable body, where at least one support stent (15), and a sheath (12) interpose between the body, and the support stent where no portions of the main stent is in contact with the support stent, and the sheath is not bonded to the support stent.

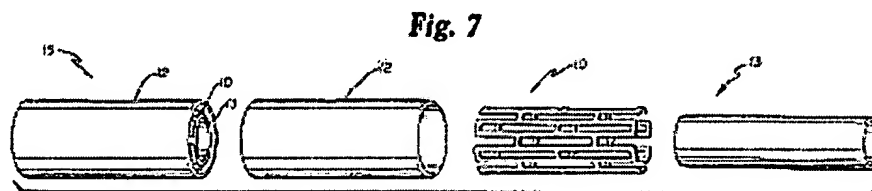
The Examiner's assertions are respectfully traversed.

Claim 17, the only independent claim presently under examination, reads as follows:

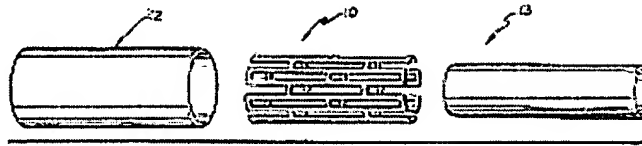
17. A covered stent comprising a main stent having a radially-expandable body, at least one support stent, and a sheath interposed between said body and said at least one support stent with no portions of said main stent being in contact with said at least one support stent, wherein said at least one support stent generates a relative pressing force with said main stent to hold said sheath in place, said sheath being not bonded to said at least one support stent with said pressing force solely acting to hold said sheath in place.

Claim 17 is clearly directed to a covered stent which includes at least two stents: "a main stent" and "at least one support stent". The Buirge et al. reference does not disclose the use of two or more stents, rather the use of only one stent.

As quoted above, the Examiner relied upon Figure 7 of Buirge et al. as a basis for rejecting claim 17. Figure 7 of Buirge et al. is as follows:



With reference to column 7, lines 30-39, Figure 7 includes only three elements: a tubular stent 10; an outer sleeve 12; and, an inner sleeve 13. These three elements are shown side-by-side on the right side of Figure 7:

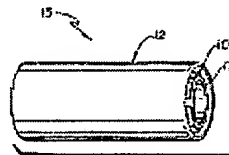


In addition, these three elements together form a stent/sleeve designated with the reference numeral 15. With reference to column 7, it is explained that these three elements together form a single stent/sleeve 15:

An example of one such embodiment is shown in FIG. 7 which comprises a tubular stent generally indicated at 10 combined with an inner sleeve 13 of collagen material and an outer sleeve 12 of collagen material which provide in combination a stent/sleeve generally indicated at 15....

(Emphasis applied).

The assembled stent/sleeve 15 is shown on the left-hand side of Figure 7:



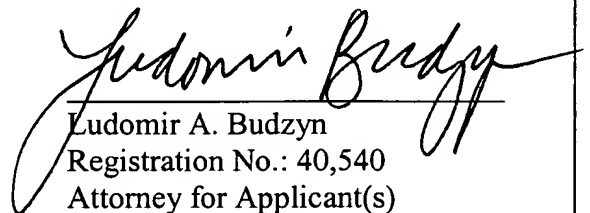
The assembled stent/sleeve 15 is clearly marked to include the three elements with the inner sleeve 13 being located on the inside of the stent 10 and the outer sleeve 12 being located on the outside of the stent 10. There is absolutely no disclosure in Buirge et al. to have an additional stent 10, outer sleeve 12, and/or inner sleeve 13 be located inside or outside of the assembled stent/sleeve 15.

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It is clear that Figure 7 of Buirge et al. only discloses the use of one stent, namely, stent 10. The Examiner's reliance on element 15 as a second "support stent" is misplaced. Element 15 in Buirge et al. is the assembly of the three referenced components: stent 10; outer sleeve 12; and, inner sleeve 13. There is clearly only one stent in the assembly 15: stent 10. Claim 17 includes a "main stent" and "at least one support stent". There is no disclosure or suggestion in Buirge et al. of using two or more such stents. It is respectfully submitted that claim 17, along with dependent claims 18-24 and 39, are patentable over Buirge et al.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicants' attorney at the number listed below.

Respectfully submitted,


Ludomir A. Budzyn
Registration No.: 40,540
Attorney for Applicant(s)

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700